IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8628 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTBHAI SOMABHAI VALAND

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

MS NANDINI JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 30/08/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Ms. Nandini Joshi, learned A.G.P. waives service of notice of rule on behalf of the respondents.

When the petition was placed for admission hearing before the Court, following order was passed by Division Bench comprising M.H.Kadri & D.P.Buch,JJ. on August 7, 2000.

"Notice as to final disposal of the petition to the respondents returnable on 28.8.2000"

In view of the above-referred to order, the petition is taken-up for final disposal today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ or direction to quash order dated June 28, 2000 passed by the 2nd Additional Special Land Acquisition Officer, Office of Collector, Gheekanta, Ahmedabad, by which prayer made by the petitioners to refer the application submitted under section 18 of the Land Acquisition Act, 1894 for determination of amount of compensation by Court, is rejected as time barred. The petitioners have further prayed to direct respondent no.2 to refer application dated September 22, 1995 to the appropriate Court for determination of the amount of compensation by the said Court.

3. The petitioners are owners of Block No.6, admeasuring 1 Are & 60 sq.mts. of village Chharodi, Taluka : Dascroi, District : Ahmedabad. The said land was acquired by the State Government for public purpose after publication of notification issued under section 4(1) of the Land Acquisition Act, 1984 ("the Act" for short) and declaration made under section 6 of the Act in the Official Gazette. The owners of the land acquired were served with notices by the 2nd Additional Special Land Acquisition Officer, Gheekanta, Ahmedabad for determination of compensation. After taking into consideration the materials placed before him, the Land Acquisition Officer had made his award on March 22, 1995. The record of the case does not indicate that when the respondent no.2 had made his award, the petitioners i.e. owners of the land in question were present or represented by any one before him. Therefore, respondent no.2 had issued notice to the petitioners as contemplated by sub-section (2) of section 12 of the Act. On receipt of the notice, the petitioners had made an application on September 22, 1995 requiring the respondents to refer the

matter to the court for determination of amount of compensation payable to the owners of the land acquired. A copy of the said application is produced by the petitioners at Annexure-A to the petition. The said application was received by respondent no.2 on September 25, 1995. The petitioners have produced original notice dated September 28, 1998 served on themby the 2nd Additional Special Land Acquisition Officer, Ahmedabad with reference to hearing of the application submitted by the petitioners under section 18 of the Act. It is ordered to be taken on record of the case. In the said notice, it is inter-alia mentioned that notice under section 12(2) of the Act was received by the petitioners on August 19, 1995 and the period of six weeks stipulated in section 18(2) Priviso (2) expired on September 29, 1995; whereas the petitioners had filed the application under section 18 of the Act on September 26, 1995. The 2nd Additional Special Land Acquisition Officer, Ahmedabad was of the view that the application submitted by the petitioners under section 18 of the Act was time barred and, therefore, by notice dated September 28, 1998 he had called upon the petitioners to show cause as to why the application for reference should not be rejected as time barred. Ultimately, the respondent no.2 by an order dated June 28, 2000 has rejected the application dated September 22, 1995 submitted by the petitioners under section 18 of the Act on the ground that it is time barred. The order passed by the respondent no.2 is produced by the petitioner at Annexure-B to the petition. According to the petitioners, they had submitted the application under section 18 of the Act within six weeks of the receipt of notice from respondent no.2 under section 12(2) of the Act and, therefore, the application could not have been rejected as time barred. Under the circumstances, the petitioners have filed present petition and claimed reliefs to which reference is made earlier.

4. Though the respondents are duly served, no reply has been filed controverting the averments made in the petition.

5. Heard the learned counsel for the parties. It is not in dispute that the respondent no.2 had made his award under section 11 of the Act on March 22, 1995. As the petitioners were not present or represented before respondent no.2 at the time when the award was made by him on March 22, 1995, notice under section 12(2) of the Act was issued to the petitioners, which was received by the petitioners on August 19, 1995. This is quite evident from the contents of notice dated September 28,

1998, which is produced on the record of the case. The petitioners had thereafter made application under section 18 of the Act on September 22, 1995. It is well settled that the period of limitation under section 18(2) of the Act would start from the date the owner of the land has knowledge of the contents of the award. The Supreme Court in RAJA HARISH CHANDRA RAJ SINGH v. DY. LAND ACQUISITION OFFICER, AIR 1961 SC 1500 has interpreted the phrase "date of the Collector's award" to mean that such date must be a date of award either communicated to or is known by the parties whether actually or constructively. It is necessary that the owner of the land must be made aware of the grounds on which the claim put forward by the owner is rejected. As the period of limitation under section 18(2) of the Act would start from the date the owner of the land has knowledge of the contents of the award, we are of the opinion that period of limitation would expire on September 25, 1995. Therefore, respondent no.2 was not justified in rejecting the application submitted by the petitioners under section 18 of the Act on the ground that it was time barred. The impugned order is, therefore, liable to be set aside and the petition deserves to be accepted.

For the foregoing reasons, the petition succeeds. The order dated June 28, 2000 passed by respondent no.2 rejecting application submitted by the petitioners under section 18 of the Act as time barred, is quashed and set aside. Respondent no.2 is directed to refer the said application to the appropriate Court for determination of amount of compensation as early as possible and preferably within one month from the date of receipt of the writ. On receipt of the reference, the same shall be decided by the Court concerned as early as possible and without any avoidable delay. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal, J.)

(M.C.Patel, J.)

(patel)